UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

SIMPSON TIMBER COMPANY

Employer-Petitioner

And

Cases 19-UC-712
19-UC-714
(Formerly 20-UC-405)[1]

WOODWORKERS/INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS LOCAL LODGE No. W-98

Union

SIMPSON TIMBER COMPANY

Employer-Petitioner

and

WOODWORKERS LOCAL LODGE W-536 affiliated with INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

Union

and

Simpson Resource Company

Party in Interest

REGIONAL DIRECTOR'S DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

[1] Originally, the Petitioner filed a petition (Case 20-UC-405) in Region 20 because its California operations are located in that Region and another petition (Case 19-UC-712) in Region 19 where its Washington operations are located. In order to insure consistency in the processing of these petitions, which raise substantially similar issues, the Board transferred Case 20-UC-405 to Region 19 for further processing as Case 19-UC-714 and in conjunction with the processing of Case 19-UC-712.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[2] in this proceeding, the undersigned makes the following findings and conclusions.[3]

SUMMARY

On May 26, 2003, the Employer-Petitioner, Simpson Timber Company (STC), filed the instant petitions seeking clarification of two existing bargaining units, one of which is comprised of employees working in and about STC's Korbel, California operations and the other in and about STC's Shelton, Washington operations.[4] Local Lodge 98 represents the California unit while Local Lodge 536 represents the Washington unit. The two units combined, include about 675 employees.[5]

STC filed the petitions because of a recent reorganization of STC into two companies on or about July 1, 2002. The two companies are a smaller STC, which retained certain wood manufacturing or mill operations of its predecessor's organization, and a new company, Simpson Resource Company (SRC), which took over the ownership, management, operations and the harvest of STC's timberland resources. STC and SRC seek to exclude, from the existing bargaining units, approximately 130 employees who are now employed by SRC due to the reorganization. Eighty of the 130 employees work in SRC's California operations and the balance work for SRC in the Washington operations.

The Union opposes the petitions on a number of grounds, which will be described in more detail below. In short, the Union contends the petition is untimely and unnecessary in light of the current labor agreements between the parties and the lack of significant impact on employees as a result of the creation of SRC. The labor agreements, by their terms, are effective June 1, 2000 through May 31, 2004.

Based on the record evidence and the arguments presented by the parties, I find that recent and substantial changes in STC and the formation of SRC establish that the two historical units no longer constitute appropriate units for the purposes of collective bargaining. Consequently, I will grant STC's petitions to clarify the two existing units into four units composed of two in the California operations and two in the Washington operations.

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[2] STC and the Unions filed timely briefs. SRC filed a letter essentially stating it would not be filing a brief but that it does support STC's requests for unit clarification. The parties' briefs and SRC's letter were duly considered.

[3] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

[4] The record reveals that the Shelton operations extend into Mason, Grays Harbor and Thurston Counties, Washington.

[5] The California unit consists of 280 employees including temporary and part time employees and excludes clerical employees, guards, professional employees and supervisory employees, and employees in the job of shipping clerk, supply store helper and check and control scalers. The Washington unit consists of 395 employees employed at the operations in Mason, Grays Harbor, and Thurston Counties (except in the McCleary and Simpson Power Operations); excluding clerical employees, technical employees, guards, supervisors, and professional employees.

Below, I have set forth a section dealing with the facts, as revealed by the record in this matter, and relating to background information about STC's history, it reorganization and relationship with other related companies, and relating to employees' community of interests. Following the Fact section is my analysis of the applicable legal standards in this case and a section setting forth my Order granting the petition.

A.) FACTS

1.) STC History, the Reorganization, and Related Company Relationships

STC started as Simpson Logging Company, in the 1880s[6] and incorporated in 1895. It is undisputed that STC has had a long history of collective bargaining in its California operations dating back to 1956 and dating further back to 1940 in its Washington operations. Simpson Logging Company changed its name in the mid-1950s to Simpson Timber Company and during that same period, it bought timberland in California. In 1985, Simpson Investment Company was created as a holding company and parent for STC and a number of STC subsidiaries. The record indicates that the extended Simpson family owned STC until 1984. It appears from the record that the family is now the sole owners of Kamilchie Company, a holding company for Simpson Investment Company. However, it is unclear when or how this transition of the family ownership from STC to Kamilchie Company occurred. The record reveals that Kamilchie Company does not participate in the management of Simpson Investment Company or STC, yet it elects the Board of Directors for Simpson Investment Company, and since July 1, 2002, it elects the Directors for SRC, as well.

In or about the fall of 2001, STC began the task of announcing and actually separating its timberland operations from its manufacturing operations with the formation of SRC. SRC was first created in October of 2001 as a division of STC. On December 31, 2001, the California timberlands properties of STC were transferred to SRC and a management agreement was entered into between SRC and STC for the latter to manage the timberlands for SRC. SRC had no employees as of the end of 2001.[7]

On June 7, 2002, STC sent letters to the Unions explaining the reorganization, its effective date of July 1, 2002, and that SRC would assume bargaining responsibilities for essentially all employees in its timberland operations in California and Washington.[8]

On June 28, 2002, SRC took over managing, operating and harvesting of the timberlands from STC. On July 1, 2002, the stock of SRC was apparently transferred to Simpson Investment Company and on that same day, Simpson Investment Company apparently also transferred SRC stock to the Kamilchie Company.[9] In sum, the record evidence reveals that on July 1, 2002, SRC became a separate and independent company from STC.

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[6] The record indicates the date was 1980 but the contexts indicate that this date should be 1880.

[7] Ultimately, all the Washington timberlands, with the exception of some timberlands surrounding the landfills in Dayton and Mattlock, Washington were transferred to SRC's ownership.

[8] In particular, the letters stated that SRC would assume bargaining unit responsibilities for employees identified in the current labor agreement as "Simpson Timber Company - Korbel Timberland operations (to include Woods and Woods Shop), and Simpson Timber Company Bargaining Unit employees in Mason and Thurston Counties designated as Camp 1, Log Sorting Yard, and Lowland Construction."

[9] The transfers were termed "dividened" in the record but it appears that the effect of the dividened actions was to transfer stock.

On June 30, 2002, prior to the separation of SRC from STC, Colin Moseley was Chairman of the Board of Simpson Investment Company and for all of the Simpson companies. He is also a family owner of Kamilchie Company. Just prior to July 1, 2002, Ray Tennison was President of all the Simpson companies.

After July 1, 2002, Moseley became the Chairman of the Board and President of SRC and a non-executive Chairman of the Board of Simpson Investment Company. As non-executive Chairman of the Board of Simpson Investment Company, Moseley is not involved in the day-to-day decisions of the Investment Company. Also after July 1, 2002, Tennison became the President and CEO of Simpson Investment Company, STC and all Simpson Investment Company subsidiaries. Besides Moseley, the only other common officer for STC and SRC is Sharon Manley, Assistant Secretary for both companies. The record reveals that Manley occupies a relatively minor official position in both companies.

Simpson Investment Company, STC and SRC have separate boards of directors, separate headquarters,[10] separate human resource and labor relations personnel, and separate reporting relationships. Both companies negotiated their own separate lines of credit. Prior to July 1, 2002, Simpson Investment Company and STC were cross-guarantors of debt for SRC. However, SRC mortgaged its timberlands to relieve Simpson Investment Company and STC of that responsibility. SRC, like STC, is a State of Washington corporation.

Although SRC and STC (and Simpson Investment Company as parent to STC) are separate corporate entities, there are still contacts between them. SRC provides some services to Simpson Investment Company, for example, public affairs and some maintenance services. It is undisputed that these services are pursuant to arms' length service agreements providing for "reasonable rates." In addition, STC still purchases 25 to 30 percent of its timber needs from SRC.

On May 9, 2003, STC's labor relations consultant, L. Fortnor, wrote a letter to Chuck McCrae, President of the Woodworkers District Lodge No. 1, seeking a clarification of the units in California and Washington in line with STC's petitions in the instant cases. However, District Lodge No. 1 rejected the clarification requests.

2.) <u>Employees' Community of Interests</u>

The separation of STC into STC and SRC also generally reflects a long-standing division that existed between the employees of those two companies even prior to the reorganization. SRC includes the employees with timberland related job functions working mostly outdoors operating heavy yet mobile equipment such as yarders, towers, chokers, grapples, bulldozers, skidders and road construction and maintenance equipment. By contrast, STC employees generally include those performing wood manufacturing functions with stationary machinery in STC's sawmills. The stationary machinery includes double cut sawyers and edgers, as well as computers. Some of STC employees also include laborers who work at cleaning up the mills.

[10] The headquarters for Simpson Investment Company, STC and the STC subsidiaries are to move from Seattle to Tacoma by March of 2004. SRC's Korbel, California operations have already moved 20 miles away to Crannell, California.

Both STC and SRC employ mechanics with STC mechanics working on STC machinery and SRC mechanics generally working on SRC machinery. However, the two companies have a service contract with each other whereby SRC mechanics repair STC's forklifts. STC and SRC mechanics are not located together in any shared facility.

The separate work functions of the timberland and manufacturing groups of employees are also reflected in the existing collective-bargaining agreements for the general classifications of timberland and manufacturing. In particular, the agreements provide for separate wage structures for the two different groups. The agreements also provide for separate seniority for timberland and manufacturing employees. The separate seniority, provided to these two groups of employees, also apparently accounts for the infrequent transfers between employees of the two groups before the separation of the companies. In particular, the record evidence reveals that before the separation, there was one transfer every 2 years from the manufacturing side to the timberland side and about 2 transfers a year from the timberland side to entry positions on the manufacturing side. After the reorganization, there have been no transfers.

Prior to the reorganization and following it, grievances involving employees in the timberland operations were handled by timberland management and grievances concerning manufacturing employees were handled by management in the manufacturing operations.

The two groups of employees have very little contact, including any common social activities, common training, or common supervision. What contact exists is currently limited to deliveries and maintenance provided pursuant to the service contracts noted above.

SRC and STC have separate employee payrolls and, although, both groups of employees receive their health and welfare benefits from Nelson Trust, the two groups have separate accounts.

As for schedules, STC's Korbel sawmill and log deck generally operate two shifts on a 10-hour shift, 4-day, Monday to Thursday schedule. Its planing mill operates 3 shifts, 10 hours a day, 4 days a week, and operates Monday to Saturday. On the other hand, SRC employees work 5 days a week, 8 hours a day with overtime on Saturday in the summertime.

B.) POSITION OF THE PARTIES

The Employer contends the existing two bargaining units are inappropriate since the recent creation of SRC and the separation of its timberland operations from STC and its manufacturing operations. In effect, the petitions seek to turn the two historical units in California and Washington into four units. In particular, the existing California unit would be divided into a timberland unit and a manufacturing unit with the same division occurring in the Washington existing unit.

The Unions essentially oppose the petitions on three grounds. First, the Unions claim that the petitions were filed during the terms of the current collective bargaining agreements between the parties and, thus, are untimely. Second, the petitions do not involve any new inclusions or exclusions of classifications, which establishes that there

has been no real change to the existing units as a result of the reorganization. Third, the Union contends there is no "emergency" requiring immediate clarification.

C.) ANALYSIS

In order for a unit clarification to be appropriate, a petitioner must show either that: (1) there have been recent substantial changes in the employer's operations;[11] or (2) the jobs in issue are new or substantially changed since the parties entered into their collective-bargaining agreement.[12] Here, there is no contention that there are new or substantially changed jobs or classifications underlying the filing of the petitions. Rather, the only issue concerns whether STC's reorganization constitutes recent substantial changes in its operations thereby rendering the historical units inappropriate for purposes of collective bargaining.[13]

In this matter, I recognize the Unions have had a long bargaining history with STC in the existing two units. While the Board places great weight on collective-bargaining history, it will clarify a historical unit where recent, significant changes have rendered that unit inappropriate.[14] "[M]ere change in ownership should not uproot bargaining units that have enjoyed a history of collective bargaining unless the units no longer conform reasonably well to other standards of appropriateness." *Mayfield Holiday Inn*, 335 NLRB No. 9 (2001), citing *Indianapolis Mack Sales*, 288 NLRB 1123 fn. 5 (1988). The reason for this is that under Section 9 of the Act, the Board can obligate parties in a bargaining relationship to bargain only *in an appropriate unit*. *Steel Workers Local 7912 (U.S. Tsubaki)*, 338 NLRB No. 5, slip op. at 2 (2002). Thus, "compelling circumstances" are required to overcome the significance of bargaining history and bargaining in an *inappropriate* unit constitutes such a compelling circumstance warranting clarification. *Children's Hospital*, 312 NLRB 920, 929 (1993); *Rock-Tenn*, 274 NLRB at 773

In *Rock-Tenn*, the Board clarified the historical single unit into a two-plant unit, where it found that changes in the organizational structure and operations of the employer's paper mill and partition plant had occurred when they were sold to separate operating divisions of the Rock-Tenn Company. At the time of the sales, there were few remaining factors of commonality between the two plants, whose employees had been represented in the single unit for approximately 14 years. Each plant was engaged in a totally different operation, had separate and distinct corporate management and supervisory staff, and labor relations had been completely decentralized. There were also dissimilarities in working conditions: the paper mill was a continuous, around-the-clock, operation with a workforce divided into four crews of 3 rotating shifts, 7 days a week, while the partition plant operated only two 8-hour shifts per day, 5 days per week.

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[11] *Batesville Casket Co., Inc.*, 283 NLRB 795 (1987).

[12] *Sunar Hauserman*, 273 NLRB 1176 (1984); *The Washington Post*, 256 NLRB 1243 (1981).

[13] Thus, the Union's cites to *Bethlehem Steel Corp.*, 329 NLRB 243 (1999) and *Wallace-Murray Corp.*, 192 NLRB 1090 (1971) are inapposite. These cases concern the inclusion or exclusion of classifications from bargaining units, which is not the case here. Significantly, these cited cases are distinguishable, explicitly as mentioned by the Board in *Bethlehem Steel*, as not concerning recent and substantial changes occurring in the bargaining unit, as is the issue in the cases at hand.

[14] *Lennox Industries*, 308 NLRB 1237 (1992); *Ameron, Inc.*, 288 NLRB 747 (1988); *Rock-Tenn Co.*, 274 NLRB 772 (1985).

Grievances were also handled separately. Thus, the changes negated any community of interest that may have existed previously among employees of the two plants.

Similarly in *Ameron, Inc.*, 288 NLRB 747 (1988), the Board clarified the existing combined single unit into two separate units, because it found that restructuring and recapitalization had resulted in the creation of a separate company (TAMCO) to operate the melt shop and rolling mill whose employees had historically been represented in a single unit combined with Ameron's wire mill employees. The Board found that each of these corporate entities had its own managers and employees, different operations requiring different equipment and skills, separate personnel departments, separate handling of labor relations, and transfers between the companies had been infrequent, all of which rendered the combined single unit inappropriate.[15]

Here, STC has been divided into two totally separate operations with separate and distinct corporate management, including separate boards of directors and separate supervisory staff. Each company has its own labor relations staff and grievances are handled separately. The employees of the two companies require different equipment and skills to perform their duties in operations that are separate and distinct. Each group works different schedules with STC employees working varying shifts and days while SRC employees generally work standard hours and days. There are no transfers and little contact between the employees of the two companies. In short, there is no community of interest between the employees of the two companies that would warrant finding any combination of SRC and STC employees appropriate for purposes of collective bargaining. Thus, I find the two existing units are inappropriate due to the recent and substantial changes.

With regard to the first of the Unions' grounds for opposing the petitions, the Unions contend that STC did not raise the issue of unit clarification at its first opportunity, during negotiations for the current collective-bargaining agreement, and further implies that STC did not seek to negotiate first with the Unions to clarify the units before filing the petitions. In short, the Unions contend the petitions are untimely in the circumstances of these cases.

However, the record evidence establishes that the Employer had informed the Unions of the nature and extent of the reorganization prior to the effective date of that reorganization. Additionally, in May of 2003, STC requested the Unions' cooperation in addressing the unit clarification issues at hand in this matter. However, the Unions essentially rejected the requests. In *Lennox Industries*, supra, and *Ameron Inc*., the Board granted unit clarifications notwithstanding the existence of labor agreements covering the employees at issue. The employer-petitioner, in the *Ameron, Inc.* case, took steps since the effective date of the then most recent collective-bargaining agreement to separate completely from the other company after years of steps in that direction. The Board in *Ameron* said, "We do not believe much weight should be given to the fact that the [p]etitioners continued to negotiate contracts covering the single unit. The intent of the [c]ompanies to become totally separate is clear. They have been

[15] See also *Lennox Industries*, supra, where the Board found that the changes in the organizational structure there, though slight, were such that the remaining administrative and managerial ties between the employing entities were effectively eliminated.

moving steadily toward that goal…" 288 NLRB at 749. Here, STC had made its intentions clear long before it initiated the present proceedings.[16]

With respect to the second ground for opposing the instant petitions, the Unions contend in their brief that STC failed to establish a need or emergency for an immediate clarification of the units, and cites *Rock-Tenn*, supra in support of this contention. The Unions do not define what they mean by need or emergency. Regardless, *Rock-Tenn* does not stand for the proposition that STC must establish an immediate or emergent need for the clarification. Rather, *Rock-Tenn* stands for the proposition that "compelling circumstances" are required to overcome the significance of bargaining history and bargaining in an *inappropriate* unit is such a compelling circumstance that would warrant clarification. As noted above, the record evidence establishes the two existing units are no longer appropriate in light of the recent reorganization of STC into two companies. In sum, STC has established "compelling circumstances" to overcome the Unions' reliance on a relatively long history of bargaining in the existing units.

Regarding the third ground for opposing the petitions, the Unions assert that the terms and conditions of employment of the unit employees were virtually unchanged after July 1, 2002, when SRC was officially created as a separate company. Thus, the Unions appear to be arguing that the reorganization had no real impact on employees. In *Lennox Industries*, supra, the Board found a unit inappropriate after reorganization even though, similar to the situation here, all employees in the contractual unit were performing the same jobs in the same locations as they did prior to the reorganization.[17] The significant change in *Lennox Industries*, which also occurred in the instant cases, was the change in management reporting structure. In both *Lennox Industries* and the cases at hand, the changes in management structure lead to the loss of the last vestiges of community of interests shared by the employees of STC and SRC.

In line its contention that there is no impact on employees as result of the reorganization, the Union argues, somewhat inconsistently, that *Rock-Tenn* is distinguishable from the case at hand because, here, unlike *Rock-Tenn*, there are no purchases of facilities from a previous owner. However, in *Lennox Industries*, the Board found the unit in that case was no longer appropriate after reorganization where managerial control was removed from a divisional level to a corporate level without any change in the geographical location of its facilities and without the purchase of any facilities from a previous owner. Thus, the Unions noted distinction is without support in Board law.

Based on the foregoing, the entire record, and having carefully considered the arguments of the parties at the hearing and in their briefs and letter, I conclude that the SRC employees shall be excluded from the two existing units in line with my Order set

[16] The Unions contend that allowing clarification under these circumstances would allow the Employer to get what it could not get by bargaining. However, that is the inherent nature of the unit clarification process.

[17] Similarly, the Unions also contend that there will be no real change to the Simpson name at SRC until July 1, 2004, and that this fact supports the Unions' position that scheduled negotiations, in April 2004, would allow the parties to fairly bargain over the unit clarification issue. However, this contention misses the point because my decision turns on the recent and substantial changes, which have recently taken place and which render the two existing units no longer appropriate for the purposes of collective bargaining at this time or in the future.

forth below.[18] Accordingly, I issue the following Order granting the Employer's petition to clarify the existing units.

D.) ORDER

IT IS HEREBY ORDERED that the unit clarification petitions filed herein be, and they are hereby, granted and the existing two units are clarified into four separate units: one unit consisting of employees employed in SRC's timberland operations in and about Korbel and Crannell, California; a second unit consisting of employees employed in STC's manufacturing and/or mill operations in Korbel, California; a third unit consisting of employees employed in SRC's timberland operations in Thurston, Grays Harbor and/or Mason Counties, Washington; and a fourth unit consisting of employees employed in STC's manufacturing and/or mill operations in Shelton, Washington. Excluded from the units will be those employees, who were excluded from the two existing units at the time of the hearing in this matter, regardless of whether they are employees of STC or SRC.

E.) RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, D.C. by 5 p.m., EST on September 19, 2003**.** The request may **not** be filed by facsimile.

DATED at Seattle, Washington this 5th day of September 2003.

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Catherine M. Roth, Acting Regional Director
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385-7533

[18] The parties have neither raised nor does the record address the issue of whether SRC's employees are agricultural employees and, thus, excluded from coverage under the Act. The burden of proving that individuals are exempt as agricultural laborers rests on the party asserting the exemption and the question of employee status is not decided on an employerwide basis, but on a classification-by-classification analysis. In light of the above, the record evidence and Board law, there is no basis to exclude any SRC's employee as an agricultural employee. See *Agrigeneral L.P.*, 325 NLRB 972 (1998). See also *The Langdale Company*, 93 NLRB 943 (1951) and *Scott Paper Company*, 171 NLRB 821 (1968).